S.B. CIVIL WRIT PETITION NO.2641/2007.

Smt.Kaumadi Kumari
Vs.
Rajasthan State Cooperative Tribunal,
Jaipur and ors.

Date of order : 27/4/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Sumit Bishnoi for the petitioner.

******

The petitioner has challenged the judgment dated 9/2/2007 passed by the Rajasthan Cooperative Tribunal, Jaipur in appeal of respondent No.7. Under challenge in appeal was the judgment of the Arbitrator dated 21/4/2000. The Sub-Registrar of the Cooperative Society as Arbitrator under Section 77 of the Rajasthan Cooperative Societies Act, 1965 passed the aforesaid judgment holding that Plot No.3 (Old), new number of which is 483, of the Officer's Camp Scheme was allotted to Smt.Kaumadi Kumari W/o Vice Admiral Madhvendra Singh in a lawful manner and that the allotment made in favour of respondent No.7 Smt.Divya Bhardwaj was not properly made. It was therefore held that

Smt.Kaumadi Kumari was entitled to receive patta of the aforesaid plot. The learned Tribunal vide its judgment dated 9/2/2007 found that the Arbitrator on the first date fixed on 21/2/2000 adjourned the matter for arguments on 28/2/2000 and thereafter fixed the matter for evidence on 6/3/2000 but on that date, instead of recording evidence, issues were framed. It thus transpired that earlier dates were given for evidence and arguments and issues were framed subsequently. The learned Tribunal held that the proper opportunity was not given to the parties to adduce evidence and conduct of the proceedings were also not conducted as required by law.

Learned counsel for the petitioner cited the judgment of this court and judgment of the Hon'ble Apex Court in **Niranjan Lal Vs. U.I.T., Alwar & Ors. (WLC 2007(1) 574** and **P.Purushottam Reddy and another Vs. Pratap Steels Ltd. [(2002) 2 SCC 686]**, regarding the powers of the appellate court for remand under Order 41 Rule 27(1)(b) CPC.

In P.Purushottam Reddy, supra, the Hon'ble Supreme Court on consideration of the provisions of Order 41 Rule 27 CPC held that while making remand the court must abide by the express provisions contained in Oder 41, Rules 23-A, 23, 27 and 25 CPC so that unwarranted orders of remand resulting in keeping litigation pending unnecessarily can be avoided. In that case, it was found that plaintiff's suit for specific performance of a contract for sale of immovable property had been decreed by the trial court after full trial and none of the conditions necessary for production of additional evidence set out in Order 41 Rule 27 were present. In Niranjan lal, supra, this Court held that if the defendant failed to adduce any evidence at the stage of the trial, he could have challenged an order of framing of issues and remand would not be proper.

In the present case however, the petitioner is still in possession of the land in dispute and the patta has also been issued in her favour by the J.D.A. All that

would happen on the matter being remanded is that the Arbitrator would be required to pass fresh award after giving opportunity to the parties to adduce evidence which was the grievance raised by respondent No.7 before the learned Tribunal that the proper opportunity has not been given to her.

I therefore decline to interfere in the matter. In the facts of the case, however, it is considered appropriate to direct that The Arbitrator i.e. the Deputy Registrar Cooperative Society Jaipur City should proceed with the matter expeditiously and passed the fresh award as early as possible but in no case later than six months from the date copy of this order is produced before him.

The writ petition is accordingly disposed of.

(MOHAMMAD RAFIQ), J.

anil